

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 187 of 1992

in

SPECIAL CIVIL APPLICATION No 3900 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SEMSON IBRAHIM CHAUDHARI

Versus

STATE OF GUJARAT  
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Appearance:

MR PV HATHI for Appellant  
NOTICE SERVED for Respondent No. 1, 2  
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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.M.KAPADIA

Date of decision: 09/02/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. This appeal filed under clause 15 of the Letters Patent is directed against judgment dated October 21, 1991, rendered by the learned Single Judge in Special Civil Application No. 3900 of 1983 by which the prayer made by the appellant to direct the respondents to prepare fresh seniority list as on April 1, 1983 on the basis that his appointment was made with effect from January 26, 1976, is rejected.

2. The appellant belongs to Scheduled Tribes Community recognised by the State of Gujarat. Pursuant to his selection by the Gujarat Public Service Commission he was appointed on the post of Sales Tax Officer in Gujarat Sales Tax Services Class II, on probation for a period of two years, vide order dated February 12, 1973. According to the appellant, one Mr. K.D. Jadav, who was initially appointed as a Sales Tax Officer, Valsad and who also belongs to Scheduled Tribes Community, was junior to him. The said Mr. Jadav was promoted as Assistant Commissioner of Sales Tax with effect from May 24, 1976 and according to the appellant by ignoring his claim. The grievance of the appellant was that he had satisfactorily completed the probation period and was appointed as a Sales Tax Officer on long term basis with effect from January 25, 1976 and as he was at Serial No. 1 in the original appointment order and as he belongs to Scheduled Tribes Community, he should have been the first person to be promoted to the post of Assistant Commissioner of Sales Tax under the 100 point roster and should have been promoted to the post of Assistant Commissioner of Sales Tax at least on May 24, 1976, i.e., the day on which Mr. Jadav was promoted. According to the appellant, his fundamental right to be treated equally in the matter of public employment was violated and the respondents had not properly and completely given effect to the directions issued by the Court in Special Civil Application No. 1835 of 1982 which was filed by him for claiming deemed date of promotion and consequential benefits flowing therefrom. The case of the appellant was that the notification dated April 26, 1983 issued by the Government whereby he was deemed to have been promoted as Assistant Commissioner of Sales Tax with effect from September 5, 1979, i.e., the date on which one Mr. J.A. Joshi had taken over as an Assistant Commissioner of Sales Tax was illegal. Under the circumstances, he instituted Special Civil Application No. 3900 of 1983 and claimed relief to which reference is made earlier. The learned Single Judge by impugned judgment has dismissed the petition giving rise to the

present appeal.

3. Mr. P.V. Hathi, learned counsel for the appellant, submitted that on the basis of "no work, no pay" the appellant should not have been denied arrears of salary when deemed date of promotion was granted to him. It was claimed that the directions issued by the High Court in Special Civil Application No. 1835 of 1982 were not fully complied with by the respondents and, therefore, notification dated April 26, 1983 giving deemed date of promotion with effect from September 5, 1979 should have been quashed by holding that the appellant was entitled to deemed date of promotion with effect from January 26, 1976. What was stressed was that Mr. Jadav was promoted in the month of May 1976 on reserved vacancy on which date the appellant was eligible for promotion and, therefore, the petition ought to have been allowed by the learned Single Judge. According to the learned counsel for the appellant, the appellant being first Scheduled Tribes candidate available for promotion when the promotional posts were filled up in the month of May 1976, necessary direction should have been given by the learned Single Judge to promote the appellant with effect from January 26, 1976 and give all consequential benefits. The learned counsel pleaded that the learned Single Judge has misinterpreted Government resolution dated March 13, 1970, and therefore, the appeal should be accepted.

4. We have heard the learned counsel for the appellant and also taken into consideration the documents produced by the appellant along with the original petition.

5. A bare reading of the directions issued by the High Court in Special Civil Application No. 1835 of 1982 makes it manifest that the appellant was required to be given deemed date of promotion on the basis of select list which was prepared in October 1976. This direction was issued as the appellant had successfully completed his probationary period and was continued in service on long term basis with effect from January 25, 1976. However, there was delay on the part of the Government in issuing select list for promotion to the post of Assistant Commissioner of Sales tax and, therefore, the appellant's case could not be considered with the result that his name was not included in the select list. The High Court, therefore, directed the respondents to give deemed date of promotion to the appellant on the basis of select list of October 1976. Under the circumstances, the learned Single Judge rightly concluded that claim of

the appellant for deemed date of promotion from January 26, 1976, was misconceived and ill-founded. For the first time departmental promotion committee had met in October 1976 to draw the select list for promotion. Therefore, the learned Single Judge, in our view, has not committed any error in negating the claim of the appellant for deemed date of promotion with effect from May 24, 1976.

6. We may mention that in reply affidavit filed by Under Secretary to Government of Gujarat the claim for seniority over Mr. Jadav advanced by the appellant was stated to be without any basis. It was asserted in the reply that Mr. Jadav was found fit for promotion by the departmental promotion committee in its meeting which was held on December 9, 1974 and name of Mr. Jadav was included in the select list drawn on December 9, 1974 and it was pursuant to his selection for promotion that he was promoted to the post of Assistant Commissioner of Sales Tax with effect from May 14, 1976. The affidavit in reply makes it more than clear that Mr. Jadav was selected for promotion in December 1974 and his name was included in the select list in December 1974. In December 1974 there was no question for any competition between Mr. Jadav and the appellant because in December 1974 the appellant had not even completed his probationary period. It is not the case of the appellant that in December 1974 he could have laid the claim for being considered for promotion to the post of Assistant Commissioner of Sales Tax. Therefore, in our view, the learned Single Judge was justified in holding that the appellant was not entitled to be promoted to the post of Assistant Commissioner of Sales Tax with effect from May 24, 1976, i.e., the day on which Mr. Jadav was promoted to that post.

7. The contention that the appellant should be deemed to have been promoted to the post of Assistant Commissioner of Sales Tax on the basis of 100 point roster was rightly rejected by the learned Single Judge in view of the judgment of the High Court dated March 19, 1981 rendered in Special Civil Application No. 3600 of 1980 and the learned counsel for the appellant has failed to point out as to how this finding recorded by the learned Single Judge is erroneous in any manner. Though the appellant was actually promoted to the post of Assistant Commissioner of Sales Tax with effect from May 17, 1980, he has been given deemed date of promotion with effect from September 5, 1979 in view of the directions issued by the High Court in Special Civil Application No. 1835 of 1982. The appellant has failed to demonstrate

before the Court that the directions issued by the High Court in Special Civil Application No. 1835 of 1982 were not fully complied with by the respondents.

8. In view of the provisions of Rule 57-A of the Bombay Civil Service Rules, it cannot be said that any error was committed by the respondents in fixing the pay of the appellant notionally and in not paying actual arrears of pay. Even otherwise also under the principle of "no work, no pay" the appellant would not be entitled to arrears of salary though deemed date of promotion was given to him. The question whether on promotion being given to an employee with effect from deemed date he would be entitled to get the pay of such higher post with retrospective effect is answered by the Supreme Court in negative in Virender Kumar, General Manager, Northern Railways, New Delhi, vs. Avinash Chandra Chadha and others, (1990) 3 SCC 472. By now it is well settled that the employee who is likely to be affected while determining question of seniority should be impleaded as one of the parties and if he is not so impleaded the question of seniority should not be examined by the Court. Here, in this case, though the appellant was claiming seniority over Mr. Jadav, he has not impleaded Mr. Jadav as one of the respondents. Therefore, even otherwise the appellant was not entitled to the relief that Mr. Jadav should not have been promoted to the post of Assistant Commissioner of Sales Tax with effect from January 26, 1976 and he should have been promoted to the said post with effect from January 26, 1976.

8. On overall view of the matter, we are satisfied that no error is committed by the learned Single Judge in dismissing the petition nor any ground is made out by the learned counsel for the appellant to interfere with the impugned judgment. Therefore the appeal cannot be allowed and is liable to be dismissed.

9. For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs.

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